No. 247

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IN THE

Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL

Appellants

v.

UNITED STATES OF AMERICA, ET AL

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

APPENDIX TO JURISDICTIONAL STATEMENT

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IN THE

United States District Court

FOR THE MIDDLE DISTRICT OF GEORGIA

SOUTHERN RAILWAY COMPANY
and GEORGIA SOUTHERN AND
FLORIDA RAILWAY COMPANY,

Plaintiffs, CIVIL ACTION
NO. 1462

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE
COMMISSION,

Defendants.

This is a proceeding by the Southern Railway Company to have set aside the report and order of the Interstate Commerce Commission in Docket No. I. & S. 6538, Routing, Coal, Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway to Georgia Southern and Florida Railway, requiring the cancellation of certain tariffs wherein Southern Railway Company and its subsidiary, Georgia Southern and Florida Railway Company, proposed to eliminate the participation of certain routes embracing intermediate carriers between Atlanta and Macon or Cordele, Georgia, in the lowest competitive joint rates on coal moving from origin mines on the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company to stations on the Georgia Southern & Florida Railway north of the Jacksonville-Chattahoochee, Florida, line of the Seaboard Air Line Railroad Company. The report of the Commission (Division 2) may be found at 300 I.C.C. 125.

For many years there has been in effect a joint rate on coal originating on the lines of the L. & N. and N.C. & St.L. (hereinafter sometimes collectively called L. & N.) and the several roads covering the following four routes:

(1) Louisville and Nashville to Atlanta; Southern to Macon; Georgia Southern to destination.

(2) Louisville and Nashville to Atlanta; Georgia Railroad to Macon; Georgia Southern to destination.

(3) Louisville and Nashville to Atlanta; Central of Georgia to Macon; Georgia Southern to destination.

(4) Louisville and Nashville to Atlanta; Atlantic Coast Line to Cordele; Georgia Southern to destination.

The Georgia Southern is a subsidiary of the Southern Railway Company and is operated as an integral part of the Southern system. Thus, in each of the above routes, final delivery is made by the Southern.

The Commission made findings to the effect that, from the common gateway, Atlanta, the distances to Warner Robins, Georgia, called by the Commission in its brief here, "a representative destination" are for the several numbered routes: (1) 104 miles; (2) 219 miles; (3) 119 miles; (4) 220 miles. Each of them requires an interchange of cars at Atlanta, and each of them, except No. (1), requires a second interchange at Macon in routes (2) and (3), and at Cordele in route (4). In the case of No. (4), Coast Line from Atlanta and Georgia Southern to Warner Robins, there is a back-haul of approximately 48 miles.

Seeking to eliminate the joint rate as existing for all routes except the direct route, No. (1), and thus obtaining for itself the maximum haul without effective competition, the Southern filed with the Commission schedules proposing to eliminate the joint rates. The Commission ordered a suspension of the proposed schedules, and the hearings resulting in the challenged order follow. The L. & N. and all other [redacted]ted carriers intervened in opposition to the Southern.

The following statement of facts is taken from the Report of the Commission:

"The principal movement of coal in 1955 from these mines over the above routes was to Warner Robins, Ga., where an Air Force base is located. This base is on the Georgia Southern 16 miles south of Macon and 48.5 miles north of Cordele. The respondents compare the short-line distances from Atlanta to Warner Robins, 104 miles, with distances over routes involving the Central of Georgia, the Georgia Railroad, and the Coast Line, 119, 219, and 220 miles, respectively. Using Windrock, Tenn., a point in Louisville & Nashville mine group 1, as representative, the short-line distance therefrom to Atlanta, thence the Southern to Warner Robins, is 335 miles, as compared with 352, 452, and 453 miles, respectively, from the same origin over routes beyond Atlanta of the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively, to the same destination. The latter routes are 5.1, 34.9, and 35.2 percent longer than the short-line route over the Southern, and do not appear to be unduly circuitous.

"A traffic study of coal moved from mines on the Louisville & Nashville and the Nashville, Chattanooga & St. Louis over these routes to Warner Robins and other stations on the Georgia Southern in 1955, disclosed that 2,030 carloads originated at mines on the Louisville & Nashville, and 12 carloads at mines on the Nashville, Chattanooga & St. Louis. All of the latter shipments moved to Warner Robins, 1 over the Central of Georgia route and 11 over the Georgia Railroad route. Of the 2,030 carloads from mines on the Louisville & Nashville, 524 moved to Warner Robins, of which 219 (41.8 percent), 114 (21.7 percent), 117 (22.3 percent), and 74 (14.2 percent) moved from Atlanta over the Southern, the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively. Of the remaining 1,506 carloads, 1,485 (98.6 percent), 4 (0.4 percent), 1 (0.07 percent), and 16 (1.06 percent) moved over the Southern, the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively. It thus appears that the great bulk of this traffic, except to Warner Robins, moved over the more direct route of the Southern, and that to

Warner Robins somewhat less than half of the shipments moved over that route.

"A witness for the Harlan County Coal Operators Association, whose members own mines in Harlan and Bell Counties, Ky., served by the Louisville & Nashville, testified that the bulk of the coal traffic of its members to these stations on the Georgia Southern, other than Warner Robins, moves over the direct route of the Southern from Atlanta through Macon. Because of the mountainous terrain in which these mines are located, the tracks of each are long enough to accommodate only 1 day's supply of empty and loaded cars. These operators are dependent upon a continuous car supply and *prefer not* to have to rely upon one railroad beyond the originating carrier's junction as a source of empty-car supply. Thus, these mines, being generally served by a single originating carrier, *urge* that they would be placed at a serious disadvantage in the absence of alternate routes beyond such junction, and would risk *possible* delays in the delivery of loaded cars, and the return of empties. A witness for the Penn-Dixie Cement Corporation, located at Clinchfield, Ga., a point midway between Macon and Cordele, and a receiver of large quantities of coal used in the manufacture of cement, stated that in 1955 some 1,400 carloads of coal moved to its plant mainly from mines on the Louisville & Nashville, and mostly over the direct route of the Southern from Atlanta. *Both witnesses admitted that the service over the latter route was adequate and satisfactory*, but they are *opposed* to the routing restrictions mainly on the ground that they *might be* handicapped at times in moving their traffic if dependent upon a single route. They *ask* that all these routes be continued as a guard against delays caused by landslides, washouts, derailments, strikes, or other *contingencies* which *might* interfere with their daily empty-car or coal supply. No one connected with the Air Force base at Warner Robins protested or appeared in opposition to the proposed restrictive routing. [Emphasis added.]

"....

"In 1955, the Georgia Railroad interchanged at Ma-

con a total of 2,142 carloads. Of this total, 576 carloads, or 26.9 percent, constituted traffic handled in connection with the Georgia Southern, of which 122 cars or 5.7 percent contained coal. The Georgia Railroad enters Macon over a branch line diverging from its main line at Camak, Ga., which is called the Macon division. This division is 78 miles in length, and constitutes about 25 percent of the total mileage of the Georgia Railroad. In 1954, that division contributed 10.66 percent of the total revenue earned by the carrier, and is characterized as a marginal operation. The Georgia Railroad and the Louisville & Nashville maintain joint terminal facilities at Atlanta so as to enable both to handle efficiently and economically traffic interchanged between them. Coal traffic from mines on the Louisville & Nashville destined to points beyond Atlanta was a persuasive factor in projecting those facilities. See Coal and Coal Briquets in the South, 289 I.C.C. 341, 362-363 [Presumably to other points as well as those on the Georgia Southern.]

"The Coast Line *urges* that the elimination of its route from Atlanta through Cordele to destinations on the Georgia Southern on this traffic would increase the cost of maintaining the service and impair its ability to continue to provide such service in the future.

. . . .

"As indicated, the Southern handled in 1955 from Atlanta practically all of the traffic here concerned, destined to points on the Georgia Southern, except to the Warner Robins Air Force base, and to that point it handled 41.8 percent, the remaining 58.2 percent having been divided among the 3 protestant bridge lines. As stated, the shipper witnesses indicated that the route of the Southern from Atlanta is satisfactory to them. It is thus reasonably certain that the great bulk of their traffic would continue to move over the Southern if the present routes were continued."

The examiner made his findings and report recommending approval of the proposed schedules. The Commission Division No. 2 sustained intervenors' exceptions to the ex-

aminer's report and entered its order cancelling the schedule, one member dissenting. Upon petition for reconsideration, the entire Commission entered its order denying the petition.

Inasmuch as our disposition of the case is based on the nature of the findings and conclusions of the Commission we deem it important to quote them in full:

> "While no representative appeared at the hearing in behalf of the Warner Robins Air Force base, section 6(8) of the Interstate Commerce Act provides that in time of war or threatened war carriers shall adopt every means within their control to facilitate and expedite military traffic, and in time of peace that deliveries of Government traffic to agents of the United States shall be made as promptly as possible. Thus, whether in time of war or peace, every reasonable effort must be made to expedite the transportation of traffic consigned to agents of the United States, and this includes traffic to the Air Force base at Warner Robins. Under the national transportation policy, the Commission is charged with the duty of promoting adequate, economical, and efficient service, and of fostering sound economic conditions in transportation and among the several carriers, to the end of developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.
>
> "Section 15(3) of the act provides that in instances where through routes or joint rates are canceled without the consent of all carriers parties thereto or authorization by the Commission, and are suspended for investigation, the burden of proof is upon the carriers proposing the cancellation to show that it is consistent with the public interest, without regard to the short-hauling or other provisions of section 15(4). The only reason given by the respondents for the proposed restrictive routing is to protect their long haul, to eliminate the bridge lines which they urge involve circuitous and time-consuming transportation, and to channel the traffic to what they believe to be a more efficient and ecocomical route.

"As stated, the bridge routes sought to be eliminated are not unduly circuitous, and the shipper testimony before us is in favor of continuing those routes. Considering our duties under the national transportation policy to maintain a transportation system adequate to meet the needs of commerce generally and of the national defense, we are not satisfied that the respondents have met the burden resting upon them of showing that the cancellation of the bridge routes proposed would be consistent with the public interest.

"...

" . . . We find that the proposed cancellation of joint rates and routes is not shown to be just and reasonable."

Thus, it is clear that the Commission based its decision that the cancellation of the bridge routes would not be consistent with the public interest on three propositions: (1) the routes identified above as (2), (3) and (4) are not unduly circuitous; (2) shipper testimony is in favor of continuing those routes; and (3) the needs of commerce generally and of the national defense require the maintenance of the status quo.

There should not, at this late date, be much dispute over the scope of the court's review of actions of the Interstate Commerce Commission. Undoubtedly the Interstate Commerce Act charges the Commission with the duty of promoting "adequate, economical, and efficient service, and of fostering sound economic conditions in transportation." It is also obvious that some of these requirements may be mutually inconsistent in particular situations. For example a sound economic condition in transportation may require a balance between the wasteful duplication of facilities and services on the one hand and the need for healthy competition on the other. The balancing of these demands is, we think, peculiarly within the jurisdiction of the Commission. Thus, in addition to the usual injunction that the courts must not upset factual determinations of administrative tri-

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bunals, if supported by adequate findings, of fact based on substantial evidence from the record as a whole, we are here required to recognize that there are also certain quasi policy determinations that are inviolate insofar as they are shown to be made within the framework of the law and on an adequate factual basis.[1]

Plaintiff here contends that the Commission's order is erroneous because it is clearly based on an improper construction of Section 6(8) of the Interstate Commerce Act,[2] whose application to the proven facts here vitiate the conclusions, and that, aside from the national defense ground, the Commission's conclusions are not based on specific findings having adequate support in the evidence.

The Commission replies that the reference in the order to Section 6(8) is illustrative only and is not made the basis of the holding, and even if "inappropriate," this would be no basis for setting the order aside. It further argues that "all required findings were made and that its conclusion is a natural one."

We conclude that on the present record the decision of the Commission cannot stand. It is not fruitful to belabor the question whether the percentage of circuity of the bridge

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[1] For a discussion of the scope of review in different situations see Interstate Commerce Commission v. Union Pacific R.R. Co., 222 U. S. 541; Mississippi Valley Barge Line v. United States, 292 U.S. 282, 286; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488; East Texas Motor Freight Line v. Frozen Foods Express, 351 U.S. 49, 54; Scofield Transportation Co. v. United States, 355 U.S. 83, 88.

[2] "Preference to shipments for United States. In time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic, for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned."
49 U.S.C.A. §6(8).

routes is to be determined by taking the straight line (Southern route) distance between the gateway at Atlanta to destination or by taking into consideration the added distance over the L. & N. before the coal is delivered to one or the other of the indicated routes. It stands without possibility of contradiction that as to two of the bridge routes, Nos. (2) and (4), the distance from the interchange at Atlanta to the selected destination is more than twice as long as the shortest route — 219 and 220 to 104, respectively. It is also undisputed that such routes involve an additional interchange to the Southern either at Macon or at Cordele. A strong case was made in the record that this amount of "circuity" was uneconomical. It can hardly be questioned that in the classical economic sense there is a waste or loss in the extra haulage involved in carrying any commodity twice as far as is necessary. The record here discloses without dispute that this economic loss is also a practical one. It is, of course, a loss which in the long run must ultimately be borne by the public, and it is thus one which it is the duty of the Commission to seek to avoid, unless there are countervailing considerations.

Use of the words "economical" and "economic" in the National Transportation Policy cleary demonstrates the intent of Congress that one of the primary concerns of Congress is to have the Commission give serious attention to the matter of providing economical transportation; that is, transportation at as low rates to the public as may be consistent with the other requirements of the Policy. We think it not amiss to note that following a special report of a subcommittee on Surface Transportation of the Senate Committee on Interstate and Foreign Commerce, and a special message from the Secretary of Commerce, Congress, at the session just ended, passed legislation to make funds available to the railroads. 72 Stat. 568, 1958 U.S. Code Congressional and Administrative News, 2969. The whole import of this

legislation is that funds for the development of needed facilities for the railroads are not available at current interest rates or in the capital market from ordinary commercial sources. A significant comment appears in the subcommittee report which is part of the legislative history of this amendment to the Interstate Commerce Act:

> "The railroad industry has not, in the subcommittee's opinion been sufficiently interested in self-help in such matters as . . . abolishing of unnecessarily circuitous routes for freight movements."

Wasteful operation, regardless of what particular carrier suffers the economic loss temporarily, is one of the things to be avoided if the elimination of the wasteful procedure does not run counter to other mandates of the Act.

We think therefore, that on his affirmative showing the Southern clearly carried the initial burden of proving that the cancellation of the two bridge routes (2) and (4) was just and reasonable and consistent with the public interest. But, as we have said, it is the Commission's duty to weigh and adjust conflicting interests. Among the considerations which it might properly weigh to counteract the prima facie case made by the plaintiff are: the need for competing lines in this particular traffic; the need for the interchanges between carriers for continued efficient transportation of this traffic or in general; the effect on such interchange and on the carriers concerned in relation to their ability to furnish the adequate service if and when needed for the national defense.

The difficulty we have in reviewing the Commission's order here is that no basic findings are made as to any of these considerations. Whatever is said in the Commission's report bearing on these matters is stated merely as the contentions of the intervenors. (See the italicized portions of the quoted findings above.) There is no finding, for instance, that deprivation of the Georgia Railroad of the traffic it

carries on this joint route will jeopardize either the maintenance of the interchange between that road and the Southern at Macon or the economic position of the road generally. There is no finding that this small amount of traffic in fact strengthens the Georgia Railroad (which may well be questioned in light of the length of the haul for the tariff received). So also with the Coast Line. So, too, with respect to the other considerations, at least some of which must be put forward by the Commission to negative the otherwise established claim of the Southern for relief.

We think the reference to Section 6 (8) in the Commission's order is inappropriate. This is true for two reasons. In the first place no findings of fact are made to bring this provision into play, such, for instance, as a finding of the existence of threatened war, or any request by the President, necessary to make applicable the first part of the section, or such as a finding that the joint routes are necessary to permit delivery "as promptly as possible" in time of peace. In the second place no findings of fact support the implied conclusion that the prompt delivery of shipments to the government's installations either in time of war or peace is dependent on the maintenance of *joint routes*, as distinguished from the maitenance of *joint* facilities. On the record, there seems not to be any suggestion that in time of emergency the expediting of shipments, under the terms of Section 6(8), would be affected in the least by whether joint tariffs were in effect.

The shipper testimony is not sufficient to amount to more than the usual wish of shippers to have as many competing lines available to them as possible. The Commission made no finding that the wishes of the two shipper witnesses were warranted by a single fact in the record. It merely stated the shipper's desires.

To the extent that the Commission's finding that the two longest routes "are not unduly circuitous" is intended to

mean that they are not undesirable from an economic standpoint, the record does not support the conclusion, and such finding is clearly erroneous. As to the Central of Georgia route, we cannot say the same. The route is so little longer than that of the Southern that we cannot overrule the Commission's finding that as to that route the Southern failed to carry its burden of showing its elimination is consistent with the public interest.

The failure of the Commission to make findings of facts which could be considered as offsetting the clear proof of the wasteful circuity of routes (2) and (4) makes it impossible for us to determine whether it made the determination between conflicting interests which determination it alone may make.

As said in Schaffer Transp. Co. v. United States, 355 U.S. 83 at page 88:

> " . . . But that discretion must be exercised in conformity with the declared policies of the Congress. To see whether those policies have been implemented we look to the Commission's own summary of the evidence, and particularly to the findings, formal or otherwise, which the Commission has made. Just as we would overstep our duty by undertaking to evaluate the evidence according to our own motions of the public interest we would shirk our duty were we summarily to approve the Commission's evaluation of the record without determining that the agency's evaluation had been made in accordance with the mandate of Congress."

It is not within our province to give effect to a part of the suspended schedule and to cancel other parts of it. It is possible for the Commission so to shape its report and order as to permit the schedule to stand so far as they eliminate routes Nos. (2) and (4) but not No. (3). [We do not even conclude that the Commission must do this. We do conclude that on the present record and findings the Commission could not legally conclude that the plaintiff had not carried its burden

of showing that the elimination of routes (2) and (4) is consistent with the public interest.]

The order of the Commission is set aside and the case is remanded to the Commission for further proceedings in conformity with this opinion.

This 22 day of September, 1958.

/s/ Elbert P. Tuttle

ELBERT P. TUTTLE
UNITED STATES CIRCUIT JUDGE

/s/ T. Hoyt Davis

T. HOYT DAVIS
UNITED STATES DISTRICT JUDGE

/s/ W. A. Bootle

W. A. BOOTLE
UNITED STATES DISTRICT JUDGE

IN THE

United States District Court

FOR THE MIDDLE DISTRICT OF GEORGIA

CIVIL ACTION NO. 1811

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Plaintiffs

v.

UNITED STATES OF AMERICA, ET AL.,
Defendants

Before BELL, Circuit Judge, and BOOTLE and MORGAN, District Judges BELL, Circuit Judge:

This is an action brought under 28 USCA, Section 1336, 1398, and 2321-2325 by plaintiffs, Atlantic Coast Line Railroad Company, Louisville and Nashville Railroad Company, and Georgia Rail Road & Banking Company, operated as Georgia Railroad by its lessees, Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company against the United States to annul and set aside a report and order of the Interstate Commerce Commission, entered on May 19, 1961, in the proceeding entitled *Routing, Coal from Origins on Louisville & N.R.*, 313 I.C.C. 752, and an order of September 13, 1961 denying a petition for reconsideration.[1]

The report and order found certain tariffs or schedules of the Southern Railway Company and its subsidiary, Geor-

[1]Harlan County Coal Operators' Association, Mead Corporation and Georgia Kraft Company, a corporation having its principal office in Macon, Georgia, were allowed to intervene as additional plaintiffs. The Interstate Commerce Commission, Southern Railway Company and Georgia, Southern and Florida Railway Company were allowed to intervene as additional defendants.

gia Southern and Florida Railway Company, to be reasonable, just and consistent with the public interest. These tariffs cancelled through routes embracing the Georgia Railroad and the Atlantic Coast Line Railroad Company, as intermediate carriers between Atlanta and Macon or Cordele, Georgia, thereby eliminating them from participation in the lowest competitive joint rates on coal moving from origin mines on the Louisville and Nashville Railroad Company to certain stations on Southern's subsidiary, the Georgia Southern and Florida Railway Company. This report and order was entered on further hearing after the remand order of this Court in *Southern Railway Co. v. United States;* 167 F. Supp. 747 which concerned the report and order of the Commission dated March 19, 1957, in the titled proceeding. 300 I.C.C. 125. The Commission proceeding was under Investigation and Suspension Docket No. 6538. The hearing there and the report and order here also embraces Suspension Docket No. 33128 of the Commission.

Following the remand order plaintiffs successfully sought to reopen the proceeding for further hearing. The Commission also vacated its previous order requiring Southern to cancel its tariff or schedule restrictions closing the Georgia Railroad and Coast Line routes. The order was continued in effect as to the through route of the Central of Georgia Railway Company with the result that Southern was not permitted to file schedules cancelling it. The original controversy was thereby narrowed to the cancellation of only two through routes when Southern filed new schedules eliminating these routes of the Georgia and Coast Line. Plaintiffs protested the schedules and requested their suspension pending the hearing in the reopened proceeding. The Commission declined to suspend, but entered an order of investigation. Docket No. 33128, supra. The schedules became effective as published.

The Examiner, after hearing, found the schedules can-

celling these routes to be just and reasonable and not otherwise unlawful, and the Commission by its Division 2 then entered the report and order which is the subject matter of this proceeding.

This court stated in its prior decision:

"For many years there has been in effect a joint rate on coal originating on the lines of the L. & N. and N. C. & St. L. [hereinafter sometimes collectively called L. & N.] and the several roads covering the following four routes:

"(1) Louisville & Nashville to Atlanta; Southern to Macon; Georgia Southern to destination.

"(2) Louisville & Nashville to Atlanta; Georgia Railroad to Macon; Georgia Southern to destination.

"(3) Louisville & Nashville to Atlanta; Central of Georgia to Macon; Georgia to destination.

"(4) Louisville & Nashville to Atlanta; Atlantic Coast Line to Cordele; Georgia Southern to destination.

"The Georgia Southern is a subsidiary of the Southern Railway Company and is operated as an integral part of the Southern system. Thus, in each of the above routes, final delivery is made by Southern.

"The Commission made findings to the effect that, from the common gateway, Atlanta, the distances to Warner Robins, Georgia, called by the Commission in its brief here, 'a representative destination' are for the several numbered routes: (1) 104 miles; (2) 219 miles; (3) 119 miles; (4) 220 miles. Each of them requires an interchange of cars at Atlanta, and each of them, except No. (1) requires a second interchange at Macon in routes (2) and (3), and at Cordele in route (4). In the case of No. (4), Coast Line from Atlanta and Georgia Southern to Warner Robins, there is a back-haul of approximately 48 miles."

This prior decision resulted from a review of a finding by

the Commission that the cancellation of the bridge routes would not be consistent with the public interest on the routes designated as (2), (3), and (4) in that they were not unduly circuitous, because shipper testimony favored their continuance, and because the needs of commerce generally and of the national defense required their maintenance. This order was set aside and the case remanded with the observation that Southern had carried the initial burden of proving that the cancellation of routes (2) and (4) was just and reasonable and consistent with the public interest in view of the extent of circuity involved considered in the light of resulting economic loss.

The remand was for the stated reason that there were no basic findings by the Commission by which countervailing considerations which might counteract the prima facie case made by Southern might be measured. The court noted that among other considerations which might properly be weighed for this purpose were the need for competing lines in the particular coal traffic involved, the need for interchanges between the carriers involved for continued efficient transportation of this traffic or in general, the effect on such interchange and on the economic position of the other carriers of the elimination of these joint routes for coal, and the effect of such elimination on the carriers concerned in relation to their ability to furnish adequate service if and when needed for national defense.[2]

The substantial and controlling question now before us is whether the decision of the Commission that cancellation of the routes in issue is just, reasonable, consistent with the public interest, or stated differently, warranted in the law, and supported by adequate findings based on substantial evidence.

We note in the beginning that our function is exhausted

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[2]Consideration of National Defense as an issue was eliminated by counsel for the parties on oral argument.

if we find a rational basis for the conclusions of the Commission. *Mississippi Valley Barge Line Co.* v *United States*, 1934, 292 U.S. 282. We may not substitute our view concerning what should be done for the judgment of the Commission if that judgment has support in the record and the applicable law. *United States* v. *Pierce Auto Freight Lines, Inc.*, 1946, 327 U.S. 515, 536. As this court stated in the prior litigation:

> ". . . Undoubtedly the Interstate Commerce Act charges the Commission with the duty of promoting 'adequate, economical, and efficient service, and of fostering sound economic conditions in transportation.' It is also obvious that some of the requirements may be mutually inconsistent in particular situations. For example a sound economic condition in transportation may require a balance between the wasteful duplication of facilities and services on the one hand and the need for healthy competition on the other. The balancing of these demands is, we think, peculiarly within the jurisdiction of the Commission. Thus, in addition to the usual injunction that the courts must not upset factual determinations of administrative tribunals, if supported by adequate findings of fact based on substantial evidence from the record as a whole, we are here required to recognize that there are also certain quasi policy determinations that are inviolate insofar as they are shown to be made within the framework of the law and on an adequate factual basis."

The Commission concluded on the evidence submitted that cancellation of routes here was consistent with the public interest, and that the schedules effecting the cancellations were just and reasonable. Several findings to support these conclusions were made and each was based on substantial evidence in the record. One of these was that the routes, measured to the principal destination of the coal traffic, were unduly circuitous and resulted in an operation at an unnecessarily higher cost than was the case over the Southern route, the routes in question being more than one

hundred percent longer than the route of the Southern.[3] Another was that an additional interchange is required on these routes either at Macon or Cordele as compared to the route of the Southern. There was contrary evidence and a finding that an interchange between the Louisville and Nashville and Coast Line had been eliminated in Atlanta through yard consolidation and that Coast Line service to Warner Robins was faster than that of Southern. It was held also that there was no showing of any shipper need for the routes. The shipper testimony was either an expression of a desire to have as many competing lines available as possible, or an expression of fear, unsubstantiated, that the daily service of the Georgia Railroad on the Macon branch (Camak to Macon) would be reduced to tri-weekly or even bi-weekly service in the event of loss of this coal traffic. It was found that the loss of this traffic would have no significant effect on the total interchange by Georgia Railroad with the Georgia Southern at Macon. Another supported finding, not rebutted by plaintiffs, was that the coal traffic in question was not profitable to the Coast Line and Georgia Railroad.

We hold that the findings were both appropriate and sufficient in scope, based on substantial evidence from the record as a whole and that the conclusions of justness, reasonableness and consistency with the public interest are warranted in fact and in law.[4]

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[3]The report and order showed that Southern in the years 1955, 1958 and 1959 moved virtually all of the effected traffic except the slightly more than one fourth of the total moving to Warner Robins Air Base which reflected the government policy of distributing traffic among available routes on a somewhat prorata basis. Thus the fight here is over the government coal traffic to Warner Robins, Georgia.

[4]Tested by the admonition of Section 15(3) of the Interstate Commerce Act, 49 USCA Section 15(3), in pertinent part:

> "If any tariff or schedules canceling any through route . . . , without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for

The remaining assignments of error include the contention that there were no findings of fact that the rates or charges as distinguished from the schedules closing the routes were just and reasonable under Sections 1(4) and 1(5) of the Act. 49 USCA 1(4), 1(5). As heretofore noted the Commission proceeded on remand under Sections 15(3) and 15(7) of the Act and the questions before it were whether the route closings were consistent with the public interest, and whether the schedules effecting the cancellations were just and reasonable. This was sufficient. The routes were closed and no question was left as to rates. Southern no longer held itself out as offering through transportation service on coal over these routes. *Thompson* v. *United States*, 1952, 343 U.S. 549, 557. That shipments could continue to move over the same route on local bills of lading at the higher combination rates would not suffice to convert the sum of the routes into through routes.

And on remand it was proper for the Commission to vacate its prior order cancelling the closing of the Coast Line and Georgia Railroad routes by Southern. The status quo did not require continuing the order of cancellation in effect in view of the decision of this court that Southern had established a prima facie case. Plaintiffs tie this action to the denial of their application to the Suspension Board of the Commission to suspend the cancellation and claim prejudice, but prejudice cannot be based on what was lawful action in every respect. We also reject the claim of plaintiffs that the

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investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, . . ."

Section 15(7) of the Act, 49 USCA 15(7) authorizes the Commission to investigate the lawfulness of any new joint rate or point classification, regulation or practice affecting any rate and may order suspension for a period no longer than seven months. The burden of proof as any hearing is on the proponent to show justness and reasonableness.

burden of proof was imposed on them in the proceedings after remand. They were not required to disprove the findings of this court. The burden remained on Southern. We likewise reject the argument that when these contentions are considered together, even if not in and of themselves unlawful, deprivation of due process under the Fifth Amendment is shown.

Plaintiffs make the novel point that Southern discriminates against the Georgia Railroad by accepting traffic from Central of Georgia at Macon on the basis of through route, joint rates in violation of the Section 3(4) of the Act, 49 USCA 3(4). They contend that the point of discrimination is upon delivery in Macon and that to avoid discrimination Southern must perform the same service at the same rate for all cars delivered to Macon by any carrier. To adopt this theory would be to eliminate consideration of the route itself and the factors relating thereto such as circuity and waste from consideration in a route closing case. We are not here concerned with switching or terminal services. Cf., *Louisville & Nashville Railroad Company v. United States*, 1915, 238 U.S. 1. Section 3(4) requires equality of treatment between connecting lines but equality of treatment involves comparable conditions and the route of the Georgia being closed does not compare with that of Southern or the Central of Georgia.

Finding no prejudicial error, and concluding that the findings of the Commission are based on substantial evidence considered on the record as a whole, that they are adequate in form and amply support the legal conclusion that Southern carried its requisite burden in connection with the closing of these routes, the petition to annul and set aside is DENIED.

This — day of April, 1962.

Griffin B. Bell
UNITED STATES CIRCUIT JUDGE

W. A. Bootle
UNITED STATES DISTRICT JUDGE

Lewis R. Morgan
UNITED STATES DISTRICT JUDGE

INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 6538[1]

ROUTING, COAL, LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

Decided March 19, 1957

1. In I. and S. No. 6538, proposed cancellations of routing in connection with rates on coal from origins on the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway to stations on the Georgia Southern & Florida Railway, found not shown to be just and reasonable. Suspended schedules ordered canceled.

2. In No. 31917, present restrictive routing in connection with rates on coal from origins on the Louisville & Nashville to points on the Georgia Southern & Florida in Florida south of the Jacksonville-Chattahoochee, Fla., line of the Seaboard Air Line Railroad to and including Palatka, Fla., found not shown to be unlawful. Proceedings discontinued.

Henry J. Karison for respondents.

U. B. Ellis, Walter C. Scott, M. T. Hastings, R. B. Gwathmey, Prime F. Osborn III, and *William A. Miller* for protestants.

Roy Carson and *R. J. Janer* for shipper interests in support of protestants.

REPORT OF THE COMMISSION

Division 2, Commissioners Freas, Winchell, and Murphy

By Division 2:

Exceptions to the report proposed by the examiner were

[1]This report embraces also No. 31917, Routing, Coal to Georgia Southern & Florida Stations in Florida.

filed by the protestants, and the respondents replied. Our conclusions differ in part from those recommended by the examiner. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on January 6, 1956, and later, the respondents, Southern Railway Company and Georgia Southern and Florida Railway Company, hereinafter called the Georgia Southern, proposed to eliminate the participation of bridge routes between Atlanta, Ga., and Macon or Cordele, Ga., in connection with the rates on coal from origins on the lines of the Louisville and Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway hereinafter called the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, respectively, to Atlanta, thence the lines of the Central of Georgia Railway Company or the Georgia Rail Road & Banking Company (operated as the Georgia Railroad by lessees: Atlantic Coast Line Railroad Company and Louisville & Nashville) to Macon, or the Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, to Cordele, Ga., thence the Georgia Southern to stations on that carrier on and north of the Jacksonville-Chattahoochee, Fla., line of the Seaboard Air Line Railroad Company, hereinafter called the Seaboard. Upon protest of the Central of Georgia, Georgia Railroad, Coast Line, Louisville & Nashville, and Nashville, Chattanooga & St. Louis, the operation of the proposed schedules was suspended to and including August 5, 1956 and by voluntary action of the respondents the effective date of the schedules was deferred until April 6, 1957.

The respondents made similar cancellations of routes comprising the lines of the same carriers between Atlanta, on the one hand, and Macon and Cordele, on the other, on coal originating on the Louisville & Nashville destined to stations on the Georgia Southern south of the Jacksonville-

Chattahoochee line of the Seaboard to and including Palatka, Fla. Protests were filed against these cancellations, but they became effective on December 30, 1955, in Agent C. A. Spaninger's tariff I. C. C. No. 1332. By order of January 5, 1956, in No. 31917, division 2, upon its own motion, instituted an investigation into and concerning the lawfulness of the present rules, regulations, and practices contained in this tariff, with a view to making such findings and orders in the premises as the facts and circumstances might appear to warrant. The two proceedings were heard on a consolidated record and will be disposed of in one report.

It is proposed to continue the route of the Southern from Atlanta to Macon, thence the Georgia Southern in instances where the latter is the delivering carrier. The routes to common points reached also by the protestant intermediate lines are not affected. The origin territory concerned is in the States of Kentucky and Tennessee, and is divided into coal-mine groups.

At the hearing the respondents stated that through tariff error in Agent Spaninger's I. C. C. No. 1499, the suspended schedules include the elimination of routes in connection with rates from mine groups on the Louisville & Nashville to stations Greggs to Quitman, Ga., inclusive, identified as items 25542-A through 25552-A of the tariff, located on the Perry branch of the Georgia Southern, formerly The South Georgia Railway Company. The Georgia Southern was permitted to acquire control of the South Georgia Railway in *South Georgia Ry. Co. Control,* 290 I. C. C. 281. One of the prescribed conditions under which that control was approved (page 298) is that the Southern and its system lines keep open and unchanged all routes in effect at the time of the filing of the application in that proceeding. It was this condition which moved the respondents to announce at the hearing that the proposed cancellation of the routes to stations Greggs to Quitman would be withdrawn.

The routes from the mines on both originating carriers to Atlanta are direct routes, thus enabling those lines to receive maximum hauls. On coal moving to stations on the Georgia Southern, the originating carriers do not maintain routes via established junctions on the system lines of the Southern other than through Atlanta, although the Louisville & Nashville could interchange coal with that carrier at Knoxville, Tenn., and the Nashville Chattanooga & St. Louis at Chattanooga, Tenn. In addition to the Southern, both originating carriers interchange traffic at Atlanta with the Central of Georgia, the Georgia Railroad, and the Coast Line. The distances from Atlanta to Macon are 88 miles over the Southern, 103 miles over the Central of Georgia, and 203 miles over the Georgia Railroad. To Cordele over the Coast Line from Atlanta the distance is 171.3 miles.

The principal movement of coal in 1955 from these mines over the above routes was to Warner Robins, Ga., where an Air Force base is located. This base is on the Georgia Southern 16 miles south of Macon and 48.5 miles north of Cordele. The respondents compare the short-line distances from Atlanta to Warner Robins, 104 miles, with distances over routes involving the Central of Georgia, the Georgia Railroad, and the Coast Line, 119, 219, and 220 miles, respectively. Using Windrock, Tenn., a point in Louisville & Nashville mine group 1, as representative, the short-line distance therefrom to Atlanta, thence the Southern to Warner Robins, is 335 miles, as compared with 352, 452, and 453 miles, respectively, from the same origin over routes beyond Atlanta of the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively, to the same destination. The latter routes are 5.1, 34.9, and 35.2 per cent longer than the short-line route over the Southern, and do not appear to be unduly circuitous.

A traffic study of coal moved from mines on the Louisville & Nashville and the Nashville, Chattanooga & St. Louis

over these routes to Warner Robins and other stations on the Georgia Southern in 1955, disclosed that 2,030 carloads originated at mines on the Louisville & Nashville, and 12 carloads at mines on the Nashville, Chattanooga & St. Louis. All of the latter shipments moved to Warner Robins, 1 over the Central of Georgia route and 11 over the Georgia Railroad route. Of the 2,030 carloads from mines on the Louisville & Nashville, 524 moved to Warner Robins, of which 219 (41.8 per cent), 114 (21.7 per cent), 117 (22.3 per cent), and 74 (14.2 per cent) moved from Atlanta over the Southern, the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively. Of the remaining 1,506 carloads, 1,485 (98.6 percent), 4 (0.4 percent), 1 (0.07 percent), and 16 (1.06 percent) moved over the Southern, the Central of Georgia, the Georgia Railroad, and the Coast Line, respectively. It thus appears that the great bulk of this traffic, except to Warner Robins, moved over the more direct route of the Southern, and that to Warner Robins somewhat less than half of the shipments moved over that route.

A witness for the Harlan County Coal Operators Association, whose members own mines in Harlan and Bell Counties, Ky., served by the Louisville & Nashville, testified that the bulk of the coal traffic of its members to these stations on the Georgia Southern, other than Warner Robins, moves over the direct route of the Southern from Atlanta through Macon. Because of the mountainous terrain in which these mines are located, the tracks of each are long enough to accommodate only 1 day's supply of empty and loaded cars. These operators are dependent upon a continuous car supply and prefer not to have to rely upon one railroad beyond the originating carrier's junction as a source of empty-car supply. Thus, these mines, being generally served by a single originating carrier, urge that they would be placed at a serious disadvantage in the absence of alternate routes beyond such junction, and would risk possible delays in the delivery of

loaded cars, and the return of empties. A witness for the Penn-Dixie Cement Corporation, located at Clinchfield, Ga., a point midway between Macon and Cordele, and a receiver of large quantities of coal used in the manufacture of cement, stated that in 1955 some 1,400 carloads of coal moved to its plant mainly from mines on the Louisville & Nashville, and mostly over the direct route of the Southern from Atlanta. Both witnesses admitted that the service over the latter route was adequate and satisfactory, but they are opposed to the routing restrictions mainly on the ground that they might be handicapped at times in moving their traffic if dependent upon a single route. They ask that all these routes be continued as a guard against delays caused by landslides, washouts, derailments, strikes, or other contingencies which might interfere with their daily empty-car or coal supply. No one connected with the Air Force base at Warner Robins protested or appeared in opposition to the proposed restrictive routing.

The protestants stress that the routes sought to be canceled have been in effect for many years. The first such routes from mines on the Louisville & Nashville via Atlanta and the Georgia Railroad and the Central of Georgia beyond to Macon, thence the Georgia Southern, became effective in 1905. In 1908, the route in connection with the Atlanta, Birmingham & Coast Railroad, thereafter acquired by the Coast Line, as an intermediate carrier through Cordele, thence the Georgia Southern, was established. The route embracing the Southern did not come into being until March 26, 1918, and then only to common points on the Georgia Southern.

The Coast Line acquired control of the Louisville & Nashville prior to 1914 and the latter obtained control of the Nashville, Chattanooga & St. Louis in 1880. As above stated, the Louisville & Nashville and the Coast Line are the joint lessees of the properties operated by them as the Georgia

Railroad. See *Louisville & N. R. Co. Financial Relations*, 33 I. C. C. 168. In *Restriction in Routing Between Greenwood and Augusta*, 165 I. C. C. 3, at pages 11 and 12, the family-line affiliations between the Coast Line and the Louisville & Nashville, on the one hand, and the Georgia Railroad, on the other, are described as follows:

> The Georgia Railroad is leased from the Georgia Railroad & Banking Company jointly by the Coast Line and the L. & N. The property is operated as a part of the Coast Line-L. & N. system. For convenience of operation a separate organization is maintained by the lessees. The president of the L. & N. and the chairman of the board of directors of the Coast Line are authorized by the two companies to operate the Georgia. This they do by appointing a general manager with authority to maintain an organization for the purpose. It makes separate reports to us, but its profits are included in the tax returns of the lessees, who share any losses from the operation of the property and furnish any money needed for additions and betterments in excess of the earnings.

These protestants indicated at the hearing that their affiliations and operational management are substantially the same at present. They urge that these considerations are important here because of the marginal nature of the operation of the Georgia Railroad over the road's segment of line here concerned and the effect which these route cancellations would have upon the service of the Coast Line through Cordele.

In 1955, the Georgia Railroad interchanged at Macon a total of 2,142 carloads. Of this total, 576 carloads, or 26.9 percent, constituted traffic handled in connection with the Georgia Southern, of which 122 cars or 5.7 percent, contained coal. The Georgia Railroad enters Macon over a branch line diverging from its main line at Camack, Ga., which is called the Macon division. This division is 78 miles in length, and constitutes about 25 percent of the total mileage of the

Georgia Railroad. In 1954, that division contributed 10.66 percent of the total revenue earned by the carrier, and is characterized as a marginal operation. The Georgia Railroad and the Louisville & Nashville maintain joint terminal facilities at Atlanta so as to enable both to handle efficiently and economically traffic interchanged between them. Coal traffic from mines on the Louisville & Nashville destined to points beyond Atlanta was a persuasive factor in projecting those facilities. See *Coal and Coal Briquets in the South*, 289 I. C. C. 341, 362-363.

The Coast Line urges that the elimination of its route from Atlanta through Cordele to destinations on the Georgia Southern on this traffic would increase the cost of maintaining the service and impair its ability to continue to provide such service in the future.

In an effort to justify the longer bridge routes, the Coast Line and the Georgia Railroad contend that because of their family affiliations and unity of purpose with the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, they are entitled to important consideration in the continuation of these routes. They urge that the commercial closing of these routes would neither be in the public interest nor consistent with the national transportation policy. Although there is a family tie between these lines, there is no indication that there is unity of purpose or action from an operational standpoint. The record is clear that the protestant railroads operate independently in representations on the various Southern Freight Association committees, and are entitled to, and actually do, express views separately and independently which sometimes differ. In contrast the Southern system lines operate as a unit in all traffic and other matters, including association procedures.

The protestants rely upon *Cancellation of Routing, Paper Gainesville M. R. Co.* 298 I. C. C. 33, and the report on reconsideration, 299 I. C. C. 107, involving a somewhat simi-

lar situation, which concerned the proposed cancellation by the Southern of routes embracing the line of the Gainesville Midland Railroad Company, and intermediate carrier in the transportation of paper and paper articles from points in southeastern territory to points in trunkline, New England, and other territories. The Commission concluded that the cancellation therein considered had not been shown to be just and reasonable.

As indicated, the Southern handled in 1955 from Atlanta practically all of the traffic here concerned, destined to points on the Georgia Southern, except to the Warner Robins Air Force base, and to that point it handled 41.8 percent, the remaining 59.2 percent having been divided among the 3 protestant bridge lines. As stated, the shipper witnesses indicated that the route of the Southern from Atlanta is satisfactory to them. It is thus reasonably certain that the great bulk of their traffic would continue to move over the Southern if the present routes were continued.

While no representative appeared at the hearing in behalf of the Warner Robins Air Force base, section 6 (8) of the Interstate Commerce Act provides that in time of war or threatened war carriers shall adopt every means within their control to facilitate and expedite military traffic, and in time of peace that deliveries of Government tariffs to agents of the United States shall be made as promptly as possible. Thus, whether in time of war or peace, every reasonable effort must be made to expedite the transportation of traffic consigned to agents of the United States, and this includes traffic to the Air Force base at Warner Robins. Under the national transportation policy, the Commission is charged with the duty of promoting adequate, economical, and efficient service; and of fostering sound economic conditions in transportation and among the several carriers, to the end of developing, coordinating, and preserving a national transportation system adequate to meet the needs of the com-

merce of the United States, of the Postal Service, and of the national defense.

Section 15 (3) of the act provides that in instances where through routes or joint rates are canceled without the consent of all carriers parties thereto or authorization by the Commission, and are suspended for investigation, the burden of proof is upon the carriers proposing the cancellation to show that it is consistent with the public interest, without regard to the short-hauling or other provisions of section 15 (4). The only reason given by the respondents for the proposed restrictive routing is to protect their long haul, to eliminate the bridge lines which they urge involve circuitous and time-consuming transportation, and to channel the traffic to what they believe to be a more efficient and economical route.

As stated, the bridge routes sought to be eliminated are not unduly circuitous, and the shippers testimony before us is in favor of continuing those routes. Considering our duties under the national transportation policy to maintain a transportation system adequate to meet the needs of commerce generally *and of the national defense*, we are not satisfied that the respondents have met the burden resting upon them of showing that the cancellation of the bridge routes proposed would be consistent with the public interest.

The bridge routes, as indicated, are now available on coal at the joint rates points on the Georgia Southern south of the Jacksonville-Chattahooche line. No shipper appeared in favor of or against opening those routes on this traffic, and this record would not support a finding that such routes are necessary or desirable in the public interest.

In I. and S. No. 6538, we find that the proposed cancellation of joint rates and routes is not shown to just and reasonable. In No. 31917, we find that the present restrictive routing is not shown to be unlawful. An appropriate order will be entered requiring cancellation of the schedules under

consideration in the suspension proceeding, and discontinuing both proceedings.

FREAS, *Commissioner*, dissenting in part:

In my opinion respondents have justified cancellation of all the routes involved.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 6538[1]

ROUTING, COAL, LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

Decided May 19, 1961

Cancellation of routes in connection with rates on coal from origins on the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway to stations on the Georgia Southern & Florida Railway, found just and reasonable. Findings in prior report, 300 I.C.C. 125, reversed, and proceedings discontinued.

Appearances as shown in prior report and, in addition:

R. Granville Curry for respondents.

C. E. Martin, Clarence Raymond, and *Albert B. Russ, Jr.,* for protestants.

L. R. Steinbach for shipper supporting protestants.

REPORT OF THE COMMISSION ON FURTHER HEARING DIVISION 2, COMMISSIONERS FREAS, GOFF, AND HERRING

BY DIVISION 2:

Exceptions were filed by the protestants to the report on further hearing proposed by the examiner, and the respondents replied. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

In the prior report in the title proceeding, 300 I.C.C. 125, division 2 ordered the cancellation of certain schedules wherein the Southern Railway Company (the Southern) and its subsidiary, the Georgia Southern and Florida Railway Company (the Georgia Southern), proposed to eliminate

[1]This report embraces also No. 33128, Routing Coal, L. & N. Mines to GS&F (SRS) Stations.

the Central of Georgia Railway Company, the Georgia Railroad,[2] and the Atlantic Coast Line Railway Company (the Coast Line) from participation as intermediate carriers between Atlanta and Macon or Cordele, Ga., in the lowest competitive joint rates[3] on coal moving from mines on the Louisville and Nashville Railroad Company (the Louisville & Nashville) and The Nashville, Chattanooga & St. Louis Railway[4] to local stations in Georgia and Florida on the Georgia Southern on and north of the Jacksonville-Chattahoochee, Fla., line of the Seaboard Air Line Railroad Company. A petition for reconsideration was denied.

In *Southern Ry. Co.* v. *United States*, 167 F. Supp. 747, a statutory three-judge court, holding that with respect to the routes via the Georgia Railroad and the Coast Line the ultimate conclusion was not supported by adequate findings of fact, set aside our order in the title proceeding and remanded the case to us for further proceedings in conformity with the court's opinion. Thereafter, the Georgia Railroad, the Coast Line, and the Louisville & Nashville filed a petition seeking reopening of that proceeding for further hearing. By order of March 23, 1959, the order requiring cancelation of the restrictions, to the extent it covered the routes via the Georgia Railroad and the Coast Line, was vacated and set aside, and, with respect to such routes, the proceeding was reopened for further hearing.

The Southern filed new schedules, effective July 13, 1959, canceling the Georgia Railroad and Coast Line routes, but continuing the route including the Central of Georgia. Upon protest of the Louisville & Nashville, Coast Line, and Georgia Railroad, the investigation in the embraced proceeding

[2] Georgia Rail Road & Banking Company, operated as the Georgia Railroad by the lessees, the Atlantic Coast Line Railroad Company and the Louisville and Nashville Railroad Company.

[3] Rates are stated per net ton, unless otherwise indicated.

[4] This company has since been merged into the Louisville & Nashville, *Louisville & N. R. Co. Merger*, 295 I.C.C. 457.

was instituted by order of July 10, 1959, but the schedules became effective as published.

The court held that the Southern had made a prima facie case under section 15(3) that cancellation of the Georgia Railroad and Coast Line routes would be consistent with the public interest by avoiding wasteful transportation, and while recognizing that "countervailing considerations" might exist which it is our duty to weigh, it held that no findings had been made that would overcome the prima facie showing.

From Atlanta, the Southern, extending southeasterly, is the direct rail route to Macon, and from thence Georgia Southern is the direct route to Cordele. The main line of the Georgia Railroad extends eastward from Atlanta to Augusta, Ga., and from Camak, Ga., about 47 miles west of Augusta, a branch line extends southwesterly to Macon. The Coast Line extends from Atlanta indirectly southward to Cordele. From Atlanta to Macon the distance over the Southern is 88 miles, compared with 203 miles over the Georgia Railroad. From Atlanta to Cordele, the distance over the Coast Line is 171.3 miles. To the principal destination of the coal traffic affected by the routing restrictions, Warner Robins, Ga., the location of an Air Force base, the distances from Atlanta over the specified routes are as follows: Southern and Georgia Southern, 104 miles; Georgia Railroad, Macon, and Georgia Southern, 219 miles; and Coast Line, Cordele, Georgia Southern, 220 miles. The latter route requires a northerly movement of 48.5 miles in the nature of a backhaul.

In the prior report, the results of a traffic study for the year 1955 showed that the great bulk of the affected traffic, except to Warner Robins, moved over the direct route of the shipments so moved. In 1958, as in 1955, the principal movement was to Warner Robins. The following table shows the number of carloads moved to Warner Robins and to other destinations over the Southern, and over the routes including

the Georgia Railroad and the Coast Line, respectively, for 1955, 1958, and until July 13, 1959:

Routes over—	Number of carloads to—	
	Warner Robins, Ga.	Other destinations
Southern:		
1955	219	1,485
1958	155	674
1959 (to July 13)	26	457
Georgia Railroad:		
1955	117	1
1958	154	10
1959 (to July 13)	15	14
Coast Line:		
1955	74	16
1958	159	0
1959 (to July 13)	15	0

As above indicated, shipments over the Georgia Railroad and the Coast Line routes to points other than the Warner Robins were few, and most were to common points. To such common points, including Cordele, Tifton, Sparks, Valdosta, and Haylow, Ga., traffic can be moved at the lowest tariff rate over routes in which the Southern would not participate. Including shipments to Warner Robins, the total over each of the bridge routes averaged less than 1 car a day; for example, in 1958 the 154 carloads to Warner Robins and the 10 cars to other points, or 164 cars, over the Georgia Railroad, amounted to slightly over 3 cars a week. In 1958 no cars moved over the Coast Line to destinations other than Warner Robins, and only 159 cars moved to Warner Robins, an average of only 3 cars per week.

The large number of carloads over the bridge routes to Warner Robins reflects the Government policy of distributing traffic among the available routes. Sustantially the same number of cars moved to Warner Robins over each of the

routes in 1958, although in 1955 the Georgia Railroad handled only 22.3 percent and the Coast Line 14.2 percent of the total carloads delivered. After those routes were closed on July 13, 1959, the Air Force distributed the traffic almost equally between the 2 remaining routes, 78 carloads having moved over the Southern and 73 over the Central of Georgia to September 1959.

The 164 carloads which the Georgia Railroad handled during 1958 earned average revenue of $69.17 per car, compared with an average of $54.90 for all traffic in the same year. On the Coast Line, the traffic produced average revenue of $65.36, which is greater than the average revenue on sand and gravel or crushed stone, and compares favorably with the average revenue on pulpwood. The 74 cars of coal interchanged by the Coast Line to the Georgia Southern in 1955, destined to Warner Robins, represented 19.47 percent of all deliveries to the Georgia Southern at Cordele; in 1958, the 159 carloads were 42.8 percent of such deliveries. Overhead traffic on the Georgia Railroad was 42.53 percent of the total handled in 1955, and 43.71 percent in 1958. If the routes remain closed, it is estimated that the net revenue loss to the Georgia Railroad will be $5,418 annually, and to the Coast Line $4,854, compared with total annual revenues of $7,903,969 and $149,588,619, respectively.

Since the last hearing in 1956, the Coast Line and the Louisville & Nashville consolidated their freight yards at Atlanta. The effective date, December 1, 1959, was the last day of the further hearing, and no operating results were available. However, it appears that the consolidation will eliminate one interchange, and will enable this traffic to leave Atlanta on an earlier train, thus reducing the scheduled time in transit to Warner Robins over the Coast Line and the Georgia Southern by 25.5 hours. Although the scheduled arrival at Warner Robins would precede the scheduled arrival of carloads over the Southern's route on the same day,

all such carloads would be switched at the same time. The return of empty coal cars to Atlanta would be faster over the direct Southern route. As previously mentioned, the 48.5-mile movement from Cordele to Warner Robins is a back-haul and the total distance from Atlanta over the Coast Line route is more than twice that over the Southern's route.

At the further hearing, neither of the two shipper interests which had participated at the original hearing appeared. As set forth in the prior report, a witness for a coal operators' association and a witness for a cement manufacturer located between Macon and Cordele stated that they preferred to have all routes kept open as assurance against failures of empty-car supply and delays caused by right-of-way emergencies. Except for coal shipped by the operators to Warner Robins, most of the traffic represented by those interests moves over the dirrect Southern route, and the service has been adequate and satisfactory.

The only shipper represented at the further hearing, a paper manufacturer at Mead, Ga. (between Macon and Warner Robins), served by the Georgia Southern and the Central of Georgia, expressed a desire for continuance of the routes in question, particularly that in connection with the Georgia Railroad. The shipper fears that the closing of the route might affect service over the Georgia Railroad in the movement of pulpwood to, and paper products from, the plant at Mead. Prior to a restriction of routes in connection with paper and pulpboard traffic, that carrier operated two trains daily, while at present there is only one. During an 8-month period in 1959, one-third of the 168,000 cords of pulpwood consumed at the Mead plant originated on the Georgia Railroad. The shipper operates six woodyards on that carrier's lines, three of which are on the Macon branch. The routing of finished paper products is related to inbound pulpwood tonnage, but owing to routing limitations the shipper has been unable to accord the Georgia Railroad the out-

bound volume proportionate to inbound traffic; in the 8-month period it was less than half. Apparently only one shipment of coal moved to the Mead plant over that route.

Over the Southern, between Atlanta and Macon, the traffic moves in heavy through trains. One scheduled train in September and October 1959, was composed of an average of 152 cars per trip, of which 136 were loaded, and the average total weight was 7,092 gross tons. Another train in the same period had an average weight of 8,394 gross tons. In contrast, one Coast Line train averaged only 4,287 gross tons, and another 2,868 gross tons.

In the prior report it was stated that the Southern and the Georgia Southern operate as a unit in all traffic and other matters. The Southern, in the period 1940 through 1958, made gross capital expenditures of $266,026,984 for road property over its entire system, including 67 improvements between Atlanta and Jacksonville from 1951 to 1959 at a total cost of $21,065,946, $17,000,000 of which was spent for a modern freight yard at Atlanta.

Over the Georgia Railroad the traffic has been handled in through trains from Atlanta to Camak, and by a local train to Macon for approximately 78 miles. In 1956, two round trips a day operated between Camak and Macon, but in December 1957, before the closing of its route on coal in July 1959, it eliminated one round trip. Although a witness stated that the loss of the coal traffic might result in a further reduction to three round trips a week, it does not appear how the loss of traffic averaging barely three cars a week would compel such curtailment. Total adjusted income on the Macon branch was $28,653 in 1958, compared with deficits of $49,618.15 in 1957 and $1,996.81 in 1956. Traffic interchanged with the Georgia Southern at Macon in 1957 accounted for 32.1 percent of the total revenue obtained by the Georgia Railroad from all traffic interchanged at Macon. For the first 8 months of 1958, the percentage was about the

same, but a heavy movement of crushed stone during the following months of 1958 and 1959 resulted in considerably higher percentages. No separate showing was made as to the effect of the coal interchange, but an annual total of 164 cars would not appear to have any significant effect on the total interchange at Macon.

Carrier	Revenue		Operating expenses
	All traffic	Coal	
	Cents	*Cents*	*Cents*
Georgia Railroad	45.8	34.1	39.1
Coast Line	50.0	37.4	37.9
Southern	52.2	69.9	33.6

The table indicates that the operating expense, which excludes payroll and other taxes, equipment and joint-facility rents, and return on investment, exceeds the revenue derived from the coal traffic here considered by both the Georgia Railroad and the Coast Line routes, the reverse obtaining in the case of the Southern. Admittedly, the data have the deficiencies of system averages, but the indicated nonprofitability of the traffic to the protestants is not rebutted by better evidence.

It is urged by the protestants that the routes in question are not unduly circuitous, referring in that connection to certain standards we applied formerly[5] in considering applications for relief from the long-and-short-haul clause of section 4 of the act, to avoid wasteful transportation. Where the direct route was between 150 and 1,000 miles in length, relief over circuitous routes was limited generally to those not more than 50 percent longer. Considering the entire distances from Windrock, Tenn., group of mines on the Louisville & Nashville to Warner Robins, as set forth in the prior report,

[5]When we had jurisdiction to consider relief over circuitous routes; since July 11, 1957, jurisdiction in that respect has been limited to direct routes.

the routes here concerned are about 35 percent longer than the Southern's direct route. The question here, however, is whether cancellation of those routes (in connection with the lowest joint rates) is consistent with the public interest under section 15(3). As pointed out, from Atlanta the routes in dispute to Warner Robins are more than 100 percent longer than the route of the Southern. As the court stated in its opinion:

> It is not fruitful to belabor the question whether the percentage of circuity of the bridge routes is to be determined by taking the straight line (Southern route) distance between the gateway at Atlanta to destination or by taking into consideration the added distance over the L. & N. before the coal is delivered to one or the other of the indicated routes. It stands without possibility of contradiction that as two of the bridge routes * * * [via the Georgia Railroad and the Coast Line], the distance from the interchange at Atlanta to the selected destination is more than twice as long as the shortest route— * * *.

The protestants argue that the higher combination rates now applicable over the routes in question are in violation of section 1(4) of the act, which makes it the duty of every railroad to establish reasonable through routes and just and reasonable rates applicable thereto, and that the failure of the Georgia Southern to accept traffic from the Georgia Railroad at Macon while accepting it from the Central of Georgia at the same junction, and the restriction against the protestants at Atlanta but not against the Central of Georgia, amount to discrimination against connecting lines contrary to section 3(4) of the act. The issue here is whether the cancellation of routes is consistent with the public interest. Section 3(4) requires equality of treatment between connecting lines, but equality of treatment is determined by similarity of circumstances and conditions. *Quanah, A & P. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 211 I.C.C. 389, See also *Denver & R.G.W.R. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 658. As indicated in the prior report, the distance from Atlanta to Warner Robins over the Central of Georgia is only about 15

miles longer than over the Southern's direct route, in contrast with 115 and 116 miles longer over the Georgia Railroad and the Coast Line, respectively, a fact which negatives any conclusion that the transportation conditions are similar.

In addition to the undue circuity of the Georgia Railroad and Coast Line routes as compared with the direct Southern route, an additional interchange is required at Macon or Cordele. As previously observed, the traffic moving over those indirect routes to Georgia Southern local points has been relatively insignificant in terms both of volume and of revenue. Considering all the evidence of record, we conclude that the cancellation of the routes here in question is consistent with the public interest.

On further hearing in the title proceeding, and in the embraced proceeding, we find that the schedules under investigation are just and reasonable. An order will be entered discontinuing the proceedings.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 19th day of March, A.D. 1957

INVESTIGATION AND SUSPENSION DOCKET NO. 6538

ROUTING — COAL — LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

No. 31917

ROUTING — COAL TO GEORGIA SOUTHERN & FLORIDA RAILWAY STATIONS IN FLORIDA

It appearing, That by order dated January 5, 1956, in I. & S. No. 6358, the Commission entered upon an investigation concerning the lawfulness of the rates, charges, regulations, and practices stated in certain schedules designated in said order, and suspended the operation of the schedules to and including November 6, 1956, and that the respondents voluntarily postponed the effectiveness of said schedules to and including April 5, 1957:

It further appearing, That by order dated January 5, 1956, in No. 31917, the Commission instituted an investigation, upon it own motion, concerning the lawfulness of the rules, regulations, and practices contained in certain schedules designated in said order, with a view to making such findings and orders in the premises as the facts and circumstances might appear to warrant;

And it further appearing, That a full investigation of the matters and things involved in these proceedings has been made, and that said division, on the date hereof, has made

and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules under investigation in I. & S. No. 6538, on or before April 26, 1957, upon not less than one day's notice to the Commission and the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

By the Commission, division 2.

HAROLD D. McCOY,

Secretary.

(SEAL)

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 23rd day of March, A.D., 1959.

INVESTIGATION AND SUSPENSION DOCKET NO. 6538

ROUTING — COAL — LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

It appearing, That in Civil Action No. 1462, in *Southern Railway Campany and Georgia Southern and Florida Railway Company* v. *United States of America and Interstate Commerce Commission*, the United States District Court for the Middle District of Georgia, on September 24, 1958, filed

its decision dated September 22, 1958, setting aside the Commission's order entered March 19, 1957, in this proceeding, and remanding the matter to the Commission for further proceedings in conformity with its opinion;

Pursuant to the court's decision, and upon consideration of a petition filed on December 11, 1958, by certain of the protestants, viz: Atlantic Coast Line Railroad Company, Louisville and Nashville Railroad Company, and Georgia Rail Road & Banking Company (operated as Georgia Railroad by lessees Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company) for reopening the proceeding for further hearing or, in the alternative, oral argument before the entire Commission, and reply to the petition by respondents; and good cause appearing:

It is ordered, That the order entered in this proceeding on March 19, 1957, requiring the respondents to cancel the schedules under suspension in I. & S. No. 6538, upon not less than one day's notice to the Commission and to the general public, which order pursuant to section 17(8) of the Interstate Commerce Act, was stayed pending disposition of respondents' petition, reinstated and modified by order entered in this proceeding on August 23, 1957, so as to require respondents to cancel such schedules on or before October 5, 1957, on not less than one day's notice, is further modified and amended by vacating and setting aside the requirements that respondents cancel the proposed cancelation of routes embracing the Atlantic Coast Line Railroad Company, and the Georgia Rail Road & Banking Company (operated as Georgia Railroad by lessee Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company) beyond Atlanta, Ga., pending decision of the Commission on further hearing in the proceeding, and that said order, of March 19, 1957, as modified and amended insofar as it affected the proposed cancelation of route over the Central

of Georgia Railway Company beyond Atlanta continues in force and effect.

And it is further ordered, That the petition whereby protestants seek the reopening of the proceeding for further hearing be, and it is hereby, granted, insofar as the order of March 19, 1957, concerns routes embracing the Atlantic Coast Line Railroad and the Georgia Railroad beyond Atlanta.

By the Commission, Division 2.

HAROLD R. McCOY

Secretary

(SEAL)

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C. on the 19th day of May, A.D. 1961.

INVESTIGATION AND SUSPENSION DOCKET NO. 6538

ROUTING COAL LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

No. 33128

ROUTING COAL L. & N. MINES TO GS&F (SRS) STATIONS

It appearing, That on March 19, 1957, division 2 filed its report, 300 I.C.C. 125, and entered its order in I. & S. No. 6538; that subsequently a petition for reconsideration was denied; and that thereafter, on September 22, 1958,

the United States District Court for the Middle District of Georgia filed its decision in *Southern Railway Co.* v. *United States*, 167 F. Supp. 747, setting aside the said order of March 19, 1957, and remanding the matter to this Commission for further proceedings in conformity with its opinion;

It further appearing, That in consideration of the court's decision and petitions of certain protestants seeking further hearing, by order entered March 23, 1959, further hearing was granted and the order of March 19, 1957 was modified by vacating and setting aside the requirement that the respondents cancel the proposed restriction of routes embracing the Atlantic Coast Line Railroad Company and the Georgia Railroad, pending the decision on further hearing;

It further appearing, That No. 33128, by order entered on July 10, 1959, an investigation was instituted into and concerning the lawfulness of certain schedules enumerated therein;

And it further appearing, That a hearing has been held, and that a full investigation of the matters and things involved in said proceedings has been made, and that the division, on the date hereof, has made and filed a report on further hearing containing its findings of fact and conclusions thereon, which report and the prior report in I. & S. No. 6538, are hereby referred to and made a part hereof:

Is is ordered, That these proceedings be, and they are hereby, discontinued.

By the Commission, division 2.

HAROLD D. McCOY,

Secretary.

(SEAL)

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington D. C., on the 13th day of September, A.D. 1961.

INVESTIGATION AND SUSPENSION DOCKET NO. 6538

ROUTING COAL LOUISVILLE & NASHVILLE RAILROAD AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY TO GEORGIA SOUTHERN & FLORIDA RAILWAY

No. 33128

ROUTING COAL L. & N. MINES TO GS&F (SRS) STATIONS

Upon consideration of the record in the above-entitled proceedings and petition of protestants, Atlantic Coast Line Railroad Company, Georgia Railroad Company, and Louisville & Nashville Railroad Company, for reopening and reconsideration of the report on further hearing and order of Division 2, decided May 19, 1961, and for oral argument, filed June 28, 1961, and reply thereto by respondents, filed July 18, 1961:

It is ordered, That the petition for reconsideration and oral argument be, and it is hereby, denied, for the reason that the matters submitted in support thereof do not constitute substantial and material grounds to warrant granting the action sought.

By the Commission.

HAROLD D. McCOY,

Secretary.

(SEAL)

STATUTES INVOLVED

NATIONAL TRANSPORTATION POLICY
(49 U.S.C. preceding § 1)

[49 U.S.C. preceding §§ 1, 301, 901, and 1001]. It is hereby declared to be the national transportation policy of the Congress **to provide for fair and impartial regulation** of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; **to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices;** to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, co-ordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. **All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.**

TITLE 49 U.S.C.

SEC. 1—REGULATION IN GENERAL; CAR SERVICE; ALTERATION OF LINE

(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reason-

able rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. **It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto;** and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

(5) **All charges made for any service rendered or to be rendered** in the transportation of passengers or property, or in connection therewith, **shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.**

SEC. 3—PREFERENCES; INTERCHANGE OF TRAFFIC; TERMINAL FACILITIES

(4) **All carriers subject to the provisions of this part shall,** according to their respective powers, **afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper.** As used in this paragraph the term "connecting

line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

SEC. 15—DETERMINATION OF RATES, ROUTES, ETC.; ROUTING OF TRAFFIC DISCLOSURES, ETC.

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. **If any tariff or schedule canceling any through route or joint rate, fare, charge or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.**

(7) **Whenever there shall be filed with the Commission any schedule stating a new** individual or joint rate, fare, or charge, or any new individual or joint classification,

or any new individual or joint **regulation or practice affecting any rate,** fare, or charge, **the Commission shall have, and it is hereby given, authority,** either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, **to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice;** and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed charge or rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the person in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified.

At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, **the burden of proof shall be upon the carrier to show that the proposed charged rate,** fare, charge classification, rule, regulation, or practice **is just and reasonable,** and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

ADMINISTRATIVE PROCEDURE ACT
TITLE 5 U. S. CODE
SEC. 7—HEARINGS

(c) EVIDENCE. — **Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof.** Any oral matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

SEC. 8—DECISIONS

In cases in which a hearing is required to be conducted in conformity with section 7—

(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. **All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record: and (2) the appropriate rule, order, sanction, relief, or denial thereof.**

SEC. 10—JUDICIAL REVIEW

Except as far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) RIGHT OF REVIEW. — **Any person suffering legal wrong because of any ageny action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.**

(c) REVIEWABLE ACTS. — **Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to re-**

view upon the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(e) SCOPE OF REVIEW.—**So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall** (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) **hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.**